IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 772 OF 2005
ALONGWITH
CRIMINAL APPLICATION NO. 773 OF 2005
ALONGWITH
CRIMINAL APPLICATION NO. 777 OF 2005
ALONGWITH
CRIMINAL APPLICATION NO. 778 OF 2005
ALONGWITH
CRIMINAL APPLICATION NO. 780 OF 2005
ALONGWITH
CRIMINAL APPLICATION NO. 782 OF 2005

Birat Chandra Dagara ...Applicant

Versus

The State of Maharashtra & Anr ...Respondents

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Mr. S.V. Marwadi i/b Mr. Harshad Bhadbhade Advocate for Applicant.

Mr. Vineet B. Naik, Advocate for Respondent No.2.

Mr. M.S. Mhambray, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 18TH JULY, 2005

P. C.:-

1. Heard the learned advocate for the applicant, the learned advocate for respondent No.2 i.e. original complainant and the learned A.P.P. for the State.

2. The applicant has prayed for quashing of process issued against him in Criminal Case No.49/S/2003, 42/S/2003, 43/S/2003, 98/S/2003, 1069/S/2002 and

65/S/2003 which are pending in the Court of learned Metropolitan Magistrate, 28th Court at Esplanade, Mumbai. In the said case, process has been issued against the applicant under Section 138 of Negotiable Instruments Act.

3. The learned advocate for the applicant states that in view of the liberty granted by this Court by order dated 12.3.2004, the applicant had preferred an application for recall of process before the learned Magistrate However, the learned Magistrate rejected the application for recalling of process by order dated 7.8.2004. Being aggrieved by the said order, the applicant has approached this Court. The Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. 2004 (4) Mh.L.J. 274** has observed that the Magistrate does not have power to recall process. In view of this decision, I am not inclined to interfere with the order of the Magistrate dated 7.8.2004 whereby the application of the applicant for recalling of process came to be rejected.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No. 550 of 2005, the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing

process. Hence, in my opinion, it would be appropriate that the applicant prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the applicant to prefer revision before the concerned Sessions Court. The learned advocate for the applicant prays that since the applicant is from Orissa the further proceedings before the trial Court be stayed for a period of six weeks from today to enable the applicant to prefer necessary revision before the Sessions Court. The learned advocate for the respondent i.e. original complainant states that he has no objection to the stay of six weeks being granted. In view of the above facts the proceedings before the trial Court are stayed for a period of six weeks from today. The learned advocate for the respondent i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge.

6. It is made clear that the revision shall be preferred in respect of the order of Magistrate issuing process and not in respect of the order of the Magistrate dated 7.8.2004 whereby the application

for recall of process came to be rejected.

7. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties. All contentions are left open.

8. Applications are disposed of.

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